

IN THE SUPREME COURT OF THE STATE OF KANSAS

RULES RELATING TO DISTRICT COURTS

GENERAL AND ADMINISTRATIVE
PREFATORY RULE



Pursuant to the authority of the Supreme Court to amend an existing form on the judicial council's website <http://www.kansasjudicialcouncil.org>, the form for Procedure under K.S.A. 60-1507 which is referenced in Supreme Court Rule 183(e) is hereby amended effective July 1, 2013. The text of the form, as amended, is attached to this order.

By order of the Court, this 28 day of June, 2013.

FOR THE COURT

A handwritten signature in black ink, appearing to read "Lawton R. Nuss", written over a horizontal line.

Lawton R. Nuss
Chief Justice

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS

PERSONS IN CUSTODY

Full name of Movant

Prison Inmate Number

Case No.: _____
(To be supplied by the Clerk of the District Court)

vs.

STATE OF KANSAS, *Respondent*.

INSTRUCTIONS—READ CAREFULLY

For this motion to be considered by the district court, you must submit it in writing (legibly handwritten or typewritten), set forth concise answers to each applicable question, and sign under penalty of perjury. If necessary, you may finish the answer to a particular question on the reverse side of the page or on an additional blank page. You must make clear the question to which a continued answer refers.

Since this motion must be subscribed as true under the penalty of perjury, any false statement of a material fact in this motion may serve as the basis of prosecution and conviction for perjury. You, therefore, should exercise care to assure that all answers are true and correct.

If you request permission to file this motion without paying the docket fee and other costs of the proceeding, you must include as an attachment at the back of this form:

1. a poverty affidavit showing your inability to pay the full costs of the proceedings; and
2. a certified inmate account statement setting forth the lesser of the average account balance or total deposits in your inmate trust fund for the six-month period preceding the filing of this motion or the current period of incarceration, whichever is shorter.

The court will determine the initial fee to be assessed for filing the action, but in no event will the court require an inmate to pay less than \$3. The poverty affidavit applies only to the amount that must be paid to file the case and does not prevent the court from later assessing the remainder of the docket fee or other fees and costs against the petitioner.

When the motion is completed, *the original and one copy* must be mailed to the Clerk of the District Court from which petitioner was sentenced.

MOTION

1. Place of detention _____
2. Name and location of the court which imposed the sentence _____

3. The case number and the offense or offenses for which sentence was imposed:
Case Number Offense
4. The date upon which sentence was imposed and the terms of the sentence:
Date Length of Sentence
5. Check whether a finding of guilty was made after a plea of:
(a) guilty _____
(b) not guilty _____
or (c) no contest _____
6. If you were found guilty after a plea of not guilty, check whether that finding was made by
(a) a jury _____
or (b) a judge without a jury _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list
(a) the name of each court to which you appealed:
i. _____
ii. _____
(b) the result in each court to which you appealed and the date of the court's decision:
i. _____
ii. _____
9. If you answered "no" to (7), state your reasons for not appealing:
(a) _____

(b) _____

(c) _____

10. State concisely all the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____

- (b) _____

- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10), and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove those facts:

- (a) _____

- (b) _____

- (c) _____

12. Prior to this motion have you filed, with respect to this conviction:

- (a) any petitions in state or federal courts for habeas corpus? _____
- (b) any petitions in the United States Supreme Court for certiorari other than petitions already specified in (8)? _____
- (c) any other petitions, motions, or applications in this or any other court?

13. If you answered "yes" to any part of (12), list with respect to each petition, motion, or application:

- (a) the specific nature of the petition, motion, or application:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the name and location of the court in which it was filed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the disposition thereof and the date of the disposition:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____

14. Has any ground set forth in (10) been presented previously to this or any other court, *state or federal*, in any petition, motion, or application that you have filed?

15. If you answered "yes" to (14), identify

(a) the grounds previously presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not been presented previously to any court, *state or federal*, set forth the ground and state concisely the reasons why the ground has not been presented previously:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of

(a) your preliminary hearing? _____

(b) your arraignment and plea? _____

(c) your trial, if any? _____

(d) your sentencing? _____

(e) your appeal, if any, from the judgment of conviction or the imposition of sentence?

(f) _____
preparation, presentation, or consideration of any petition, motion, or application that you filed regarding this conviction?

18. If you answered "yes" to one or more parts of (17), list

(a) the name and address of each attorney who represented you:

i. _____

ii. _____

iii. _____

(b) the proceedings at which the attorney represented you:

i. _____

ii. _____

iii. _____

- (c) whether the attorney was:
i. appointed by the court? _____; or
ii. of your own choosing? _____

19. If your motion is based on the district court's refusal to appoint you counsel, attach the transcript of the proceedings which supports your allegation.

20. If your motion is based on the failure of counsel to represent you adequately, state concisely and in detail what counsel failed to do in representing your interests:

(a) _____

(b) _____

21. Are you now serving a sentence from any other court that you have not challenged? _____

22. Are you seeking permission to proceed *in forma pauperis*? _____ If so, have you attached the completed affidavit and certified inmate account statement (see instructions, page 1 of this form)? _____

I, _____, declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____.

Signature of Movant

POVERTY AFFIDAVIT
(See instructions on page 1 of this form)

In the District Court of _____ County, Kansas:

I, _____, inmate number _____, am currently an inmate in the custody of the secretary of corrections and am unable to pay the full amount of the docket fee in this matter by reason of poverty. Pursuant to K.S.A. 60-2001(b)(2), the following information is provided in support.

Employment: I am ___ employed; ___ not employed.

My employer is: _____

My employer's address is: _____

Income: I receive income from the following other sources (**list amount per week**):

Employment income (after withholdings) is: \$ _____

Rental income: \$ _____

Interest and / or dividends: \$ _____

Spousal support and / or child support: \$ _____

Retirement, pension, social security: \$ _____

Disability, workers compensation: \$ _____

Unemployment benefits: \$ _____

Other Income (Describe) _____ \$ _____

TOTAL weekly income from all sources: \$ _____

Assets on Hand: I presently have the following assets (list value):

Cash (including bank accounts, prison accounts, and electronic accounts): \$ _____

Automobile, truck or other vehicle: \$ _____

Real property (home, building or land): \$ _____

Other assets (jewelry, watches, etc.) \$ _____

Other Assets: Are you a beneficiary of any current estate, trust, annuity, or life insurance policy? If so, please provide the details.

Other Reasons: Explain any other facts or reasons why you cannot afford to pay the full amount of the docket fee in your case.

I do solemnly swear or affirm that the claim set forth in the motion is just, and I do further swear or affirm that, by reason of my poverty, I am unable to pay the full amount of the docket fee.

I, _____, declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____.

Signature of Movant